

AMENDED IN SENATE MAY 3, 2004

AMENDED IN SENATE APRIL 15, 2004

SENATE BILL

No. 1797

**Introduced by Committee on Public Safety (Senators McPherson
(Chair), Burton, Margett, Romero, Sher, and Vasconcellos)**

February 20, 2004

An act to amend Section 21647 of the Business and Professions Code, and to amend Sections 832.15, ~~832.16~~, 11108.3, 12010, 12011, 12021 12030, 12078, and 12082 of, *to add Section 832.17 to*, and to repeal Section 12076.5 of, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 1797, as amended, Committee on Public Safety. Public safety: omnibus bill.

Existing law requires the Department of Justice to notify a state or local agency as to whether an individual applying for a position as a peace officer, as defined, is prohibited from possessing, receiving, owning, or purchasing a firearm, as specified. Existing law requires the applicant to provide the Department of Justice with fingerprints and other identifying information deemed necessary by the department prior to the department making the notification.

This bill would extend the duties to notify and to provide fingerprints to cases where persons are applying for a position as a custodial officer or transportation officer, as specified.

~~Existing law requires the Department of Justice to notify a state or local agency employing a peace officer, as defined, who is authorized by the employing agency to carry a firearm, as to whether that peace officer is prohibited from possessing, receiving, owning, or purchasing~~

~~a firearm, as specified. Existing law requires the employing agency to provide the Department of Justice with fingerprints and other identifying information deemed necessary by the department prior to the department making the notification.~~

~~This bill would extend the duties to notify and to provide fingerprints to cases where persons are custodial officers or transportation officers, as specified.~~

~~By imposing additional duties in connection with supplying fingerprints on local law enforcement agencies, this bill would impose a state-mandated local program.~~

This bill would also require the Department of Justice to notify a state or local agency employing an individual as a custodial officer or transportation officer prior to January 1, 2005, and who is authorized by the employing agency to carry a firearm, as to whether, the individual is prohibited from possessing, receiving, owning, or purchasing a firearm. The bill would require the individual to provide the department with fingerprints and other identifying information as specified.

Existing law authorizes local law enforcement agencies to report certain information in connection with recovered firearms illegally possessed, used in a crime, or suspected of being used in a crime, to the Attorney General, as specified.

This bill would make a nonsubstantive, technical change to those provisions.

Existing law establishes the Prohibited Armed Persons File, and requires the Department of Justice to search a specified firearms database in connection with the administration and purposes of the Prohibited Armed Persons File.

This bill would make technical changes to references to the firearms database system the department is required to access.

Existing law provides that every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by certain restraining or other specified orders, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison, by a fine not exceeding \$1,000, or by both that imprisonment and fine.

This bill would include for those purposes, certain protective orders, as specified.

By expanding the definition of a crime, this bill would impose a state-mandated local program.



Existing law contains 2 identical sections in the Penal Code, each denominated 12076.5.

This bill would repeal one of those sections.

Existing law, subject to exceptions, requires persons who are not licensed firearms dealers to complete sales of firearms through licensed firearms dealers, as specified. Existing law also establishes fees that firearms dealers may charge in connection firearms transfers.

This bill would clarify those provisions and preclude the firearms dealer from charging any additional fee for the transaction.

The bill would provide that other bills that are enacted that affect any section in this bill would prevail over this bill.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21647 of the Business and Professions
- 2 Code is amended to read:
- 3 21647. (a) Whenever any peace officer has probable cause to
- 4 believe that property, except coins, monetized bullion, or
- 5 “commercial grade ingots” as defined in subdivision (d) of



1 Section 21627, in the possession of a pawnbroker, secondhand
2 dealer, or coin dealer is stolen, the peace officer may place a hold
3 on the property for a period not to exceed 90 days. When a peace
4 officer places a hold on the property, the peace officer shall give
5 the pawnbroker, secondhand dealer, or coin dealer a written notice
6 at the time the hold is placed, describing the item or items to be
7 held. During that period the pawnbroker, secondhand dealer, or
8 coin dealer shall not release or dispose of the property, except
9 pursuant to a court order or upon receipt of a written authorization
10 signed by any peace officer who is a member of the law
11 enforcement agency of which the peace officer placing the hold on
12 the property is a member. A pawnbroker, secondhand property
13 dealer, or coin dealer shall not be subject to civil liability for
14 compliance with this section.

15 (b) Whenever property that is in the possession of a
16 pawnbroker, secondhand dealer, or coin dealer, whether or not the
17 property has been placed on hold, is required by a peace officer in
18 a criminal investigation, the pawnbroker, secondhand dealer, or
19 coin dealer, upon reasonable notice, shall produce the property at
20 reasonable times and places or may deliver the property to the
21 peace officer upon the request of any peace officer.

22 (c) Whenever a law enforcement agency has knowledge that
23 property in the possession of a pawnbroker, secondhand dealer, or
24 coin dealer has been reported as lost or stolen, the law enforcement
25 agency shall notify in writing the person who reported the property
26 as lost or stolen of the following:

27 (1) The name, address, and telephone number of the
28 pawnbroker, secondhand dealer, or coin dealer who reported the
29 acquisition of the property.

30 (2) That the law neither requires nor prohibits payment of a fee
31 or any other condition in return for the surrender of the property,
32 except that when the person who reported the property lost or
33 stolen does not choose to participate in the prosecution of an
34 identified alleged thief, the person shall pay the pawnbroker,
35 secondhand dealer, or coin dealer the “out-of-pocket” expenses
36 paid in the acquisition of the property in return for the surrender
37 of the property.

38 (3) That if the person who reported the property as lost or stolen
39 takes no action to recover the property from the pawnbroker,
40 secondhand dealer, or coin dealer within 60 days of the mailing of

1 the notice, the pawnbroker, secondhand dealer, or coin dealer may
2 treat the property as other property received in the ordinary course
3 of business. During the 60-day notice period, the pawnbroker,
4 secondhand dealer, or coin dealer may not release the property to
5 any other person.

6 (4) That a copy of the notice, with the address of the person who
7 reported the property as lost or stolen deleted, will be mailed to the
8 pawnbroker, secondhand dealer, or coin dealer who is in
9 possession of the property.

10 (d) When property that is in the possession of a pawnbroker,
11 secondhand dealer, or coin dealer is subject to a hold as provided
12 in subdivision (a), and the property is no longer required for the
13 purpose of a criminal investigation, the law enforcement agency
14 that placed the hold on the property shall release the hold on the
15 property. When the law enforcement agency has knowledge that
16 the property has been reported lost or stolen, the law enforcement
17 agency shall then make notification to the person who reported the
18 property as lost or stolen pursuant to subdivision (c).

19 (e) If a pledgor seeks to redeem property that is subject to a
20 hold, the pawnbroker shall advise the pledgor of the name of the
21 peace officer who placed the hold on the property and the name of
22 the law enforcement agency of which the officer is a member. If
23 the property is not required to be held pursuant to a criminal
24 prosecution the hold shall be released.

25 (f) Whenever information regarding allegedly lost or stolen
26 property is entered into the Department of Justice automated
27 property system or Consolidated Firearms Information System,
28 and the property is thereafter identified and found to be in the
29 possession of a pawnbroker, secondhand dealer, or coin dealer, and
30 the property is thereafter placed on a hold pursuant to this section
31 and the hold, including any additional hold, is allowed to lapse, or
32 60 days elapse following the delivery of the notice required to be
33 given by this section to the person who reported the property to be
34 lost or stolen without a claim being made by that person,
35 whichever is later, the pawnbroker, secondhand dealer, or coin
36 dealer may mail under a Certificate of Mailing issued by the
37 United States Post Office, addressed to the law enforcement
38 agency that placed the property on hold, a written request to delete
39 the property listing from the Department of Justice automated
40 property system or Consolidated Firearms Information System, as

1 is applicable. Within 30 days after the request has been mailed, the
2 law enforcement agency shall either cause the property listing to
3 be deleted as requested or place a hold on the property. If no law
4 enforcement agency takes any further action with respect to the
5 property within 45 days after the mailing of the request, the
6 pawnbroker, secondhand dealer, or coin dealer may presume that
7 the property listing has been deleted as requested and may
8 thereafter deal with the property accordingly, and shall not be
9 subject to liability arising from the failure of the removal of the
10 property listing from the Department of Justice automated
11 property system or Consolidated Firearms Information System.

12 (g) Nothing in this section shall be construed to alter the
13 authority of a peace officer to seize property pursuant to any other
14 provision of statutory or case law.

15 SEC. 1.5. Section 832.15 of the Penal Code is amended to
16 read:

17 832.15. (a) On and after October 1, 1993, the Department of
18 Justice shall notify a state or local agency as to whether an
19 individual applying for a position as a peace officer, as defined by
20 this chapter, or a custodial officer authorized by the employing
21 agency to carry a firearm pursuant to Section 831.5, or by a
22 transportation officer pursuant to Section 831.6 authorized by the
23 employing agency to carry a firearm, is prohibited from
24 possessing, receiving, owning, or purchasing a firearm pursuant to
25 Section 12021 or 12021.1 of the Penal Code, or Section 8100 or
26 8103 of the Welfare and Institutions Code. The notice shall
27 indicate the date that the prohibition expires. However, the notice
28 shall not provide any other information with respect to the basis for
29 the prohibition.

30 (b) Before providing the information specified in subdivision
31 (a), the peace officer, custodial officer, or transportation officer
32 applicant shall provide the Department of Justice with fingerprints
33 and other identifying information deemed necessary by the
34 department.

35 (c) The Department of Justice may charge the applicant a fee
36 sufficient to reimburse its costs for furnishing the information
37 specified in subdivision (a).

38 (d) The notice required by this section shall not apply to
39 persons receiving treatment under subdivision (a) of Section 8100
40 of the Welfare and Institutions Code.

1 ~~SEC. 2.—Section 832.16 of the Penal Code is amended to read:~~

2 ~~832.16. (a) On and after October 1, 1993, the Department of~~
3 ~~Justice shall notify a state or local agency employing a peace~~
4 ~~officer, as defined by this chapter, or custodial officer, or~~
5 ~~transportation officer, who is authorized by the employing agency~~
6 ~~to carry a firearm, as to whether that peace officer, custodial~~
7 ~~officer, or transportation officer is prohibited from possessing,~~
8 ~~receiving, owning, or purchasing a firearm pursuant to Section~~
9 ~~12021 or 12021.1 of the Penal Code, or Section 8100 or 8103 of~~
10 ~~the Welfare and Institutions Code. The notice shall indicate the~~
11 ~~date that the prohibition expires. However, the notice shall not~~
12 ~~provide any other information with respect to the basis for the~~
13 ~~prohibition.~~

14 ~~(b) Before providing the information specified in subdivision~~
15 ~~(a), the agency employing the peace officer, custodial officer, or~~
16 ~~transportation officer shall provide the Department of Justice with~~
17 ~~the officer's fingerprints and other identifying information~~
18 ~~deemed necessary by the department.~~

19 ~~(c) The information specified in this section shall only be~~
20 ~~provided by the Department of Justice subject to the availability~~
21 ~~of funding.~~

22 ~~(d) The notice required by this section shall not apply to~~
23 ~~persons receiving treatment under subdivision (a) of Section 8100~~
24 ~~of the Welfare and Institutions Code.~~

25 *SEC. 2. Section 832.17 is added to the Penal Code, to read:*

26 *832.17. (a) Upon request by a state or local agency, the*
27 *Department of Justice shall notify the state or local agency as to*
28 *whether an individual employed as a custodial officer or*
29 *transportation officer prior to January 1, 2005, and authorized by*
30 *the employing agency to carry a firearm, is prohibited from*
31 *possessing, receiving, owning, or purchasing a firearm pursuant*
32 *to Section 12021 or 12021.1 of the Penal Code, or Section 8100*
33 *or 8103 of the Welfare and Institutions Code. The notice shall*
34 *indicate the date on which the prohibition expires. However, the*
35 *notice shall not provide any other information with respect to the*
36 *basis for the prohibition. Upon request by an individual employed*
37 *as a custodial officer or transportation officer prior to January 1,*
38 *2005, and authorized by the employing agency to carry a firearm,*
39 *the department shall provide the notice for that individual to the*
40 *state or local agency.*

1 (b) Before the department provides the information specified in
2 subdivision (a), the custodial officer or transportation officer shall
3 provide the department with his or her fingerprints and other
4 identifying information deemed necessary by the department.

5 (c) The department may charge the custodial officer or
6 transportation officer a fee sufficient to reimburse its costs for
7 furnishing the information specified in subdivision (a). A local law
8 enforcement agency may pay this fee for the transportation officer
9 or custodial officer.

10 (d) The notice required by this section shall not apply to
11 persons receiving treatment under subdivision (a) of Section 8100
12 of the Welfare and Institutions Code.

13 SEC. 3. Section 11108.3 of the Penal Code is amended to
14 read:

15 11108.3. (a) In addition to the requirements of Section 11108
16 that apply to a local law enforcement agency's duty to report to the
17 Department of Justice the recovery of a firearm, a police or
18 sheriff's department shall, and any other law enforcement agency
19 or agent may, report to the department in a manner determined by
20 the Attorney General in consultation with the Bureau of Alcohol,
21 Tobacco, Firearms and Explosives all available information
22 necessary to identify and trace the history of all recovered firearms
23 that are illegally possessed, have been used in a crime, or are
24 suspected of having been used in a crime. In addition, any law
25 enforcement agency or agent may report to the Attorney General
26 pursuant to this section all information pertaining to any firearm
27 taken into custody, except where the firearm has been voluntarily
28 placed with the law enforcement agency for safekeeping storage.

29 (b) When the department receives information from a local law
30 enforcement agency pursuant to subdivision (a), it shall promptly
31 forward this information to the National Tracing Center of the
32 federal Bureau of Alcohol, Tobacco, Firearms and Explosives to
33 the extent practicable.

34 (c) The Department of Justice shall implement an electronic
35 system by January 1, 2002, to receive comprehensive tracing
36 information from each local law enforcement agency, and to
37 forward this information to the National Tracing Center.

38 (d) In implementing this section, the Attorney General shall
39 ensure to the maximum extent practical that both of the following
40 apply:

1 (1) The information he or she provides to the federal Bureau of
2 Alcohol, Tobacco, Firearms and Explosives enables that agency to
3 trace the ownership of the firearm described in subdivision (a).

4 (2) Local law enforcement agencies can report all relevant
5 information without being unduly burdened by this reporting
6 function.

7 (e) Information collected pursuant to this section shall be
8 maintained by the department for a period of not less than 10 years,
9 and shall be available, under guidelines set forth by the Attorney
10 General, for academic and policy research purposes.

11 (f) The Attorney General shall have the authority to issue
12 regulations to further the purposes of this section.

13 SEC. 4. Section 12010 of the Penal Code is amended to read:

14 12010. (a) The Attorney General shall establish and maintain
15 an online database to be known as the Prohibited Armed Persons
16 File. The purpose of the file is to cross-reference persons who have
17 ownership or possession of a firearm on or after January 1, 1991,
18 as indicated by a record in the Consolidated Firearms Information
19 System, and who, subsequent to the date of that ownership or
20 possession of a firearm, fall within a class of persons who are
21 prohibited from owning or possessing a firearm.

22 (b) The information contained in the Prohibited Armed
23 Persons File shall only be available to those entities specified in,
24 and pursuant to, subdivision (b) or (c) of Section 11105, through
25 the California Law Enforcement Telecommunications System, for
26 the purpose of determining if persons are armed and prohibited
27 from possessing firearms.

28 SEC. 5. Section 12011 of the Penal Code is amended to read:

29 12011. The Prohibited Armed Persons File database shall
30 function as follows:

31 (a) Upon entry into the Automated Criminal History System of
32 a disposition for a conviction of any felony, a conviction for any
33 firearms-prohibiting charge specified in Section 12021, a
34 conviction for an offense described in Section 12021.1, a firearms
35 prohibition pursuant to Section 8100 or 8103 of the Welfare and
36 Institutions Code, or any firearms possession prohibition
37 identified by the federal National Instant Check System, the
38 Department of Justice shall determine if the subject has an entry
39 in the Consolidated Firearms Information System indicating

1 possession or ownership of a firearm on or after January 1, 1991,
2 or an assault weapon registration.

3 (b) Upon an entry into any department automated information
4 system that is used for the identification of persons who are
5 prohibited from acquiring, owning, or possessing firearms, the
6 department shall determine if the subject has an entry in the
7 Consolidated Firearms Information System indicating ownership
8 or possession of a firearm on or after January 1, 1991, or an assault
9 weapon registration.

10 (c) If the department determines that, pursuant to subdivision
11 (a) or (b), the subject has an entry in the Consolidated Firearms
12 Information System indicating possession or ownership of a
13 firearm on or after January 1, 1991, or an assault weapon
14 registration, the following information shall be entered into the
15 Prohibited Armed Persons File:

16 (1) The subject's name.

17 (2) The subject's date of birth.

18 (3) The subject's physical description.

19 (4) Any other identifying information regarding the subject
20 that is deemed necessary by the Attorney General.

21 (5) The basis of the firearms possession prohibition.

22 (6) A description of all firearms owned or possessed by the
23 subject, as reflected by the Consolidated Firearms Information
24 System.

25 SEC. 6. Section 12021 of the Penal Code is amended to read:

26 12021. (a) (1) Any person who has been convicted of a
27 felony under the laws of the United States, of the State of
28 California, or any other state, government, or country, or of an
29 offense enumerated in subdivision (a), (b), or (d) of Section
30 12001.6, or who is addicted to the use of any narcotic drug, who
31 owns, purchases, receives, or has in his or her possession or under
32 his or her custody or control any firearm is guilty of a felony.

33 (2) Any person who has two or more convictions for violating
34 paragraph (2) of subdivision (a) of Section 417 and who owns,
35 purchases, receives, or has in his or her possession or under his or
36 her custody or control any firearm is guilty of a felony.

37 (b) Notwithstanding subdivision (a), any person who has been
38 convicted of a felony or of an offense enumerated in Section
39 12001.6, when that conviction results from certification by the
40 juvenile court for prosecution as an adult in an adult court under

Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (a) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on

1 reduction or elimination of the prohibition, or otherwise grant
2 relief from the prohibition as the court deems appropriate:

3 (A) Finds by a preponderance of the evidence that the
4 petitioner is likely to use a firearm in a safe and lawful manner.

5 (B) Finds that the petitioner is not within a prohibited class as
6 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
7 and the court is not presented with any credible evidence that the
8 petitioner is a person described in Section 8100 or 8103 of the
9 Welfare and Institutions Code.

10 (C) Finds that the petitioner does not have a previous
11 conviction under this subdivision no matter when the prior
12 conviction occurred.

13 In making its decision, the court shall consider the petitioner's
14 continued employment, the interest of justice, any relevant
15 evidence, and the totality of the circumstances. The court shall
16 require, as a condition of granting relief from the prohibition under
17 this section, that the petitioner agree to participate in counseling
18 as deemed appropriate by the court. Relief from the prohibition
19 shall not relieve any other person or entity from any liability that
20 might otherwise be imposed. It is the intent of the Legislature that
21 courts exercise broad discretion in fashioning appropriate relief
22 under this paragraph in cases in which relief is warranted.
23 However, nothing in this paragraph shall be construed to require
24 courts to grant relief to any particular petitioner. It is the intent of
25 the Legislature to permit persons who were convicted of an offense
26 specified in Section 273.5, 273.6, or 646.9 to seek relief from the
27 prohibition imposed by this subdivision.

28 (3) Any person who is subject to the prohibition imposed by
29 this subdivision because of a conviction of an offense prior to that
30 offense being added to paragraph (1) may petition the court only
31 once for relief from this prohibition. The petition shall be filed
32 with the court in which the petitioner was sentenced. If possible,
33 the matter shall be heard before the same judge that sentenced the
34 petitioner. Upon filing the petition, the clerk of the court shall set
35 the hearing date and notify the petitioner and the prosecuting
36 attorney of the date of the hearing. Upon making each of the
37 following findings, the court may reduce or eliminate the
38 prohibition, impose conditions on reduction or elimination of the
39 prohibition, or otherwise grant relief from the prohibition as the
40 court deems appropriate:

1 (A) Finds by a preponderance of the evidence that the
2 petitioner is likely to use a firearm in a safe and lawful manner.

3 (B) Finds that the petitioner is not within a prohibited class as
4 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
5 and the court is not presented with any credible evidence that the
6 petitioner is a person described in Section 8100 or 8103 of the
7 Welfare and Institutions Code.

8 (C) Finds that the petitioner does not have a previous
9 conviction under this subdivision, no matter when the prior
10 conviction occurred.

11 In making its decision, the court may consider the interest of
12 justice, any relevant evidence, and the totality of the
13 circumstances. It is the intent of the Legislature that courts exercise
14 broad discretion in fashioning appropriate relief under this
15 paragraph in cases in which relief is warranted. However, nothing
16 in this paragraph shall be construed to require courts to grant relief
17 to any particular petitioner.

18 (4) Law enforcement officials who enforce the prohibition
19 specified in this subdivision against a person who has been granted
20 relief pursuant to paragraph (2) or (3) shall be immune from any
21 liability for false arrest arising from the enforcement of this
22 subdivision unless the person has in his or her possession a
23 certified copy of the court order that granted the person relief from
24 the prohibition. This immunity from liability shall not relieve any
25 person or entity from any other liability that might otherwise be
26 imposed.

27 (d) (1) Any person who, as an express condition of probation,
28 is prohibited or restricted from owning, possessing, controlling,
29 receiving, or purchasing a firearm and who owns, purchases,
30 receives, or has in his or her possession or under his or her custody
31 or control, any firearm but who is not subject to subdivision (a) or
32 (c) is guilty of a public offense, which shall be punishable by
33 imprisonment in a county jail not exceeding one year or in the state
34 prison, by a fine not exceeding one thousand dollars (\$1,000), or
35 by both that imprisonment and fine. The court, on forms provided
36 by the Department of Justice, shall notify the department of
37 persons subject to this subdivision. The notice shall include a copy
38 of the order of probation and a copy of any minute order or abstract
39 reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars (\$1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

1 (B) The person possessed the firearm no longer than was
2 necessary to deliver or transport the firearm to a law enforcement
3 agency for that agency's disposition according to law.

4 (C) If the firearm was transported to a law enforcement agency,
5 it was transported in accordance with paragraph (18) of
6 subdivision (a) of Section 12026.2.

7 (D) If the firearm is being transported to a law enforcement
8 agency, the person transporting the firearm has given prior notice
9 to the law enforcement agency that he or she is transporting the
10 firearm to the law enforcement agency for disposition according
11 to law.

12 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
13 (e), the trier of fact shall determine whether the defendant was
14 acting within the provisions of the exemption created by this
15 subdivision.

16 (3) The defendant has the burden of proving by a
17 preponderance of the evidence that he or she comes within the
18 provisions of the exemption created by this subdivision.

19 (i) Subject to available funding, the Attorney General, working
20 with the Judicial Council, the California Alliance Against
21 Domestic Violence, prosecutors, and law enforcement, probation,
22 and parole officers, shall develop a protocol for the
23 implementation of the provisions of this section. The protocol
24 shall be designed to facilitate the enforcement of restrictions on
25 firearm ownership, including provisions for giving notice to
26 defendants who are restricted, provisions for informing those
27 defendants of the procedures by which defendants shall dispose of
28 firearms when required to do so, provisions explaining how
29 defendants shall provide proof of the lawful disposition of
30 firearms, and provisions explaining how defendants may obtain
31 possession of seized firearms when legally permitted to do so
32 pursuant to this section or any other provision of law. The protocol
33 shall be completed on or before January 1, 2005.

34 SEC. 7. Section 12030 of the Penal Code is amended to read:
35 12030. (a) The officer having custody of any firearms which
36 may be useful to the California National Guard, the Coast Guard
37 Auxiliary, or to any military or naval agency of the federal or state
38 government, including, but not limited to, the California National
39 Guard military museum and resource center, may, upon the
40 authority of the legislative body of the city, city and county, or

county by which he or she is employed and the approval of the Adjutant General, deliver the firearms to the commanding officer of a unit of the California National Guard, the Coast Guard Auxiliary, or any other military agency of the state or federal government in lieu of destruction as required by this chapter. The officer delivering the firearms shall take a receipt for them containing a complete description thereof and shall keep the receipt on file in his or her office as a public record.

(b) Any law enforcement agency which has custody of any firearms, or any parts of any firearms, which are subject to destruction as required by this chapter may, in lieu of destroying the weapons, retain and use any of them as may be useful in carrying out the official duties of the agency, or upon approval of a court, may release them to any other law enforcement agency for use in carrying out the official duties of that agency, or may turn over to the criminalistics laboratory of the Department of Justice or the criminalistics laboratory of a police department, sheriff's office, or district attorney's office any weapons which may be useful in carrying out the official duties of their respective agencies.

(c) Any firearm, or part of any firearm, which, rather than being destroyed, is used for official purposes pursuant to this section shall be destroyed by the agency using the weapon when it is no longer needed by the agency for use in carrying out its official duties. In the case of firearms or weaponry donated to the California National Guard military museum and resource center, they may be disposed of pursuant to Section 179 of the Military and Veterans Code.

(d) Any law enforcement agency which has custody of any firearms, or any parts of any firearms, which are subject to destruction as required by this chapter may, in lieu of destroying the firearms, obtain an order from the superior court directing the release of the firearms to the sheriff. The sheriff shall enter such weapons into the Consolidated Firearms Information System with a complete description of each weapon, including the make, type, category, caliber, and serial number of the firearms, and the name of the academy receiving the weapon entered into the Consolidated Firearms Information System miscellaneous field. The sheriff shall then release the firearms to the basic training academy certified by the Commission on Peace Officer Standards

1 and Training, so that the firearms may be used for instructional
2 purposes in the certified courses. As used in this section, the term
3 “firearms” shall not include destructive devices, as defined in
4 Section 12301. All firearms released to an academy shall be under
5 the care, custody, and control of the particular academy.

6 Any firearms, or part of any firearms, which is not destroyed,
7 and is used for the purposes authorized by this section, shall be
8 returned to the law enforcement agency which had original
9 custody of the firearms when it is no longer needed by the basic
10 training academy, or when the basic training academy is no longer
11 certified by the commission.

12 (e) Any law enforcement agency that retains custody of any
13 firearm pursuant to this section or that destroys a firearm pursuant
14 to Section 12028 shall notify the Department of Justice of the
15 retention or destruction. This notification shall consist of a
16 complete description of each firearm, including the name of the
17 manufacturer or brand name, model, caliber, and serial number.

18 SEC. 8. Section 12076.5 of the Penal Code, as added by
19 Chapter 940 of the Statutes of 2001, is repealed.

20 SEC. 9. Section 12078 of the Penal Code is amended to read:

21 12078. (a) (1) The waiting periods described in Sections
22 12071, 12072, and 12084 shall not apply to deliveries, transfers,
23 or sales of firearms made to persons properly identified as
24 full-time paid peace officers as defined in Chapter 4.5
25 (commencing with Section 830) of Title 3 of Part 2, provided that
26 the peace officers are authorized by their employer to carry
27 firearms while in the performance of their duties. Proper
28 identification is defined as verifiable written certification from the
29 head of the agency by which the purchaser or transferee is
30 employed, identifying the purchaser or transferee as a peace
31 officer who is authorized to carry firearms while in the
32 performance of his or her duties, and authorizing the purchase or
33 transfer. The certification shall be delivered to the dealer or local
34 law enforcement agency acting pursuant to Section 12084 at the
35 time of purchase or transfer and the purchaser or transferee shall
36 identify himself or herself as the person authorized in the
37 certification. The dealer or local law enforcement agency shall
38 keep the certification with the record of sale, or LEFT, as the case
39 may be. On the date that the delivery, sale, or transfer is made, the
40 dealer delivering the firearm or the law enforcement agency

processing the transaction pursuant to Section 12084 shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) or (c) of Section 12077 or Section 12084. If electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to deliveries, transfers, or sales of firearms made to authorized law enforcement representatives of cities, counties, cities and counties, or state or federal governments for exclusive use by those governmental agencies if, prior to the delivery, transfer, or sale of these firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which he or she is employed. Within 10 days of the date a pistol, revolver, or other firearm capable of being concealed upon the person is acquired by the agency, a record of the same shall be entered as an institutional weapon into the Consolidated Firearms Information System via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency. Those agencies without access to Consolidated Information System shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(3) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to the loan of a firearm made by an authorized law enforcement representative of a city, county, or city and county, or the state or federal government to a peace officer employed by that agency and authorized to carry a firearm for the carrying and use of that firearm by that peace officer in the course and scope of his or her duties.

1 (4) Subdivision (b) of Section 12801 and the preceding
2 provisions of this article do not apply to the delivery, sale, or
3 transfer of a firearm by a law enforcement agency to a peace officer
4 pursuant to Section 10334 of the Public Contract Code. Within 10
5 days of the date that a pistol, revolver, or other firearm capable of
6 being concealed upon the person is sold, delivered, or transferred
7 pursuant to Section 10334 of the Public Contract Code to that
8 peace officer, the name of the officer and the make, model, serial
9 number, and other identifying characteristics of the firearm being
10 sold, transferred, or delivered shall be entered into the
11 Consolidated Firearms Information System via the California Law
12 Enforcement Telecommunications System (CLETS) by the law
13 enforcement or state agency that sold, transferred, or delivered the
14 firearm. Those agencies without access to the Consolidated
15 Firearms Information System shall arrange with the sheriff of the
16 county in which the agency is located to input this information via
17 this system.

18 (5) Subdivision (b) of Section 12801 and the preceding
19 provisions of this article do not apply to the delivery, sale, or
20 transfer of a firearm by a law enforcement agency to a retiring
21 peace officer who is authorized to carry a firearm pursuant to
22 Section 12027.1. Within 10 days of the date that a pistol, revolver,
23 or other firearm capable of being concealed upon the person is
24 sold, delivered, or transferred to that retiring peace officer, the
25 name of the officer and the make, model, serial number, and other
26 identifying characteristics of the firearm being sold, transferred,
27 or delivered shall be entered into the Consolidated Firearms
28 Information System via the California Law Enforcement
29 Telecommunications System (CLETS) by the law enforcement or
30 state agency that sold, transferred, or delivered the firearm. Those
31 agencies without access to the Consolidated Firearms Information
32 System shall arrange with the sheriff of the county in which the
33 agency is located to input this information via this system.

34 (6) Subdivision (d) of Section 12072 and subdivision (b) of
35 Section 12801 do not apply to sales, deliveries, or transfers of
36 firearms to authorized representatives of cities, cities and counties,
37 counties, or state or federal governments for those governmental
38 agencies where the entity is acquiring the weapon as part of an
39 authorized, voluntary program where the entity is buying or
40 receiving weapons from private individuals. Any weapons



1 acquired pursuant to this paragraph shall be disposed of pursuant
2 to the applicable provisions of Section 12028 or 12032.

3 (7) Subdivision (d) of Section 12072 and subdivision (b) of
4 Section 12801 shall not apply to the sale, loan, delivery, or transfer
5 of a firearm made by an authorized law enforcement
6 representative of a city, county, city and county, state, or the federal
7 government to any public or private nonprofit historical society,
8 museum, or institutional collection or the purchase or receipt of
9 that firearm by that public or private nonprofit historical society,
10 museum, or institutional collection if all of the following
11 conditions are met:

12 (A) The entity receiving the firearm is open to the public.

13 (B) The firearm prior to delivery is deactivated or rendered
14 inoperable.

15 (C) The firearm is not subject to Section 12028, 12028.5,
16 12030, or 12032.

17 (D) The firearm is not prohibited by other provisions of law
18 from being sold, delivered, or transferred to the public at large.

19 (E) Prior to delivery, the entity receiving the firearm submits
20 a written statement to the law enforcement representative stating
21 that the firearm will not be restored to operating condition, and will
22 either remain with that entity, or if subsequently disposed of, will
23 be transferred in accordance with the applicable provisions of this
24 article and, if applicable, Section 12801.

25 (F) Within 10 days of the date that the firearm is sold, loaned,
26 delivered, or transferred to that entity, the name of the government
27 entity delivering the firearm, and the make, model, serial number,
28 and other identifying characteristics of the firearm and the name
29 of the person authorized by the entity to take possession of the
30 firearm shall be reported to the department in a manner prescribed
31 by the department.

32 (G) In the event of a change in the status of the designated
33 representative, the entity shall notify the department of a new
34 representative within 30 days.

35 (8) Subdivision (d) of Section 12072 and subdivision (b) of
36 Section 12801 shall not apply to the sale, loan, delivery, or transfer
37 of a firearm made by any person other than a representative of an
38 authorized law enforcement agency to any public or private
39 nonprofit historical society, museum, or institutional collection if
40 all of the following conditions are met:

- 1 (A) The entity receiving the firearm is open to the public.
- 2 (B) The firearm is deactivated or rendered inoperable prior to
3 delivery.
- 4 (C) The firearm is not of a type prohibited from being sold,
5 delivered, or transferred to the public.
- 6 (D) Prior to delivery, the entity receiving the firearm submits
7 a written statement to the person selling, loaning, or transferring
8 the firearm stating that the firearm will not be restored to operating
9 condition, and will either remain with that entity, or if
10 subsequently disposed of, will be transferred in accordance with
11 the applicable, provisions of this article and, if applicable Section
12 12801.
- 13 (E) If title to a handgun is being transferred to the public or
14 private nonprofit historical society, museum, or institutional
15 collection, then the designated representative of that public or
16 private historical society, museum or institutional collection
17 within 30 days of taking possession of that handgun, shall forward
18 by prepaid mail or deliver in person to the Department of Justice,
19 a single report signed by both parties to the transaction, that
20 includes information identifying the person representing that
21 public or private historical society, museum, or institutional
22 collection, how title was obtained and from whom, and a
23 description of the firearm in question, along with a copy of the
24 written statement referred to in subparagraph (D). The report
25 forms that are to be completed pursuant to this paragraph shall be
26 provided by the Department of Justice.
- 27 (F) In the event of a change in the status of the designated
28 representative, the entity shall notify the department of a new
29 representative within 30 days.
- 30 (b) (1) Section 12071, subdivisions (c) and (d) of Section
31 12072, and subdivision (b) of Section 12801 shall not apply to
32 deliveries, sales, or transfers of firearms between or to importers
33 and manufacturers of firearms licensed to engage in that business
34 pursuant to Chapter 44 (commencing with Section 921) of Title 18
35 of the United States Code and the regulations issued pursuant
36 thereto.
- 37 (2) Subdivision (b) of Section 12801 shall not apply to the
38 delivery, sale, or transfer of a handgun to a person licensed
39 pursuant to Section 12071, where the licensee is receiving the



1 handgun in the course and scope of his or her activities as a person
2 licensed pursuant to Section 12071.

3 (c) (1) Subdivision (d) of Section 12072 shall not apply to the
4 infrequent transfer of a firearm that is not a pistol, revolver, or
5 other firearm capable of being concealed upon the person by gift,
6 bequest, intestate succession, or other means by one individual to
7 another if both individuals are members of the same immediate
8 family.

9 (2) Subdivision (d) of Section 12072 shall not apply to the
10 infrequent transfer of a pistol, revolver, or other firearm capable
11 of being concealed upon the person by gift, bequest, intestate
12 succession, or other means by one individual to another if both
13 individuals are members of the same immediate family and both
14 of the following conditions are met:

15 (A) The person to whom the firearm is transferred shall, within
16 30 days of taking possession of the firearm, forward by prepaid
17 mail or deliver in person to the Department of Justice, a report that
18 includes information concerning the individual taking possession
19 of the firearm, how title was obtained and from whom, and a
20 description of the firearm in question. The report forms that
21 individuals complete pursuant to this paragraph shall be provided
22 to them by the Department of Justice.

23 (B) If taking possession of the firearm prior to January 1, 2003,
24 the person taking title to the firearm shall first obtain a basic
25 firearms safety certificate. If taking possession on or after January
26 1, 2003, the person taking title to the firearm shall first obtain a
27 handgun safety certificate.

28 (3) As used in this subdivision, “immediate family member”
29 means any one of the following relationships:

30 (A) Parent and child.

31 (B) Grandparent and grandchild.

32 (d) (1) Subdivision (d) of Section 12072 shall not apply to the
33 infrequent loan of firearms between persons who are personally
34 known to each other for any lawful purpose, if the loan does not
35 exceed 30 days in duration and, when the firearm is a handgun,
36 commencing January 1, 2003, the individual being loaned the
37 handgun has a valid handgun safety certificate.

38 (2) Subdivision (d) of Section 12072, and subdivision (b) of
39 Section 12801 shall not apply to the loan of a firearm where all of
40 the following conditions exist:

1 (A) The person loaning the firearm is at all times within the
2 presence of the person being loaned the firearm.

3 (B) The loan is for a lawful purpose.

4 (C) The loan does not exceed three days in duration.

5 (D) The individual receiving the firearm is not prohibited from
6 owning or possessing a firearm pursuant to Section 12021 or
7 12021.1 of this code, or by Section 8100 or 8103 of the Welfare
8 and Institutions Code.

9 (E) The person loaning the firearm is 18 years of age or older.

10 (F) The person being loaned the firearm is 18 years of age or
11 older.

12 (e) Section 12071, subdivisions (c) and (d) of Section 12072,
13 and subdivision (b) of Section 12801 shall not apply to the delivery
14 of a firearm to a gunsmith for service or repair, or to the return of
15 the firearm to its owner by the gunsmith.

16 (f) Subdivision (d) of Section 12072 and subdivision (b) of
17 Section 12801 shall not apply to the sale, delivery, or transfer of
18 firearms by persons who reside in this state to persons who reside
19 outside this state who are licensed pursuant to Chapter 44
20 (commencing with Section 921) of Title 18 of the United States
21 Code and the regulations issued pursuant thereto, if the sale,
22 delivery, or transfer is in accordance with Chapter 44
23 (commencing with Section 921) of Title 18 of the United States
24 Code and the regulations issued pursuant thereto.

25 (g) (1) Subdivision (d) of Section 12072 shall not apply to the
26 infrequent sale or transfer of a firearm, other than a pistol,
27 revolver, or other firearm capable of being concealed upon the
28 person, at auctions or similar events conducted by nonprofit
29 mutual or public benefit corporations organized pursuant to the
30 Corporations Code.

31 As used in this paragraph, the term “infrequent” shall not be
32 construed to prohibit different local chapters of the same nonprofit
33 corporation from conducting auctions or similar events, provided
34 the individual local chapter conducts the auctions or similar events
35 infrequently. It is the intent of the Legislature that different local
36 chapters, representing different localities, be entitled to invoke the
37 exemption created by this paragraph, notwithstanding the
38 frequency with which other chapters of the same nonprofit
39 corporation may conduct auctions or similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within two business days of completion of the application to purchase, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in subdivision (c) of Section 12077. If the electronic or telephonic transfer of applicant information is used, within two business days of completion of the application to purchase, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (c) of Section 12077.

(h) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the loan of a firearm to a person 18 years of age or older for the purposes of shooting at targets if the loan occurs on the premises of a target facility that holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this

code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms and all of the following conditions are met:

(A) If the person taking title or possession is neither a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, nor a person who is receiving that firearm pursuant to subparagraph (G), (I), or (J) of paragraph (2) of subdivision (u), the person shall, within 30 days of taking possession, forward by prepaid mail or deliver in person to the Department of Justice, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(B) If the person taking title or possession is receiving the firearm pursuant to subparagraph (G) of paragraph (2) of subdivision (u), the person shall do both of the following:

(i) Within 30 days of taking possession, forward by prepaid mail or deliver in person to the department, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(ii) Prior to taking title or possession of the firearm, if title or possession is taken prior to January 1, 2003, the person shall either obtain a basic firearms safety certificate or be exempt from obtaining a basic firearms safety certificate pursuant to Section 12081. Prior to taking title or possession of the firearm, if title or possession is taken on or after January 1, 2003, the person shall obtain a handgun safety certificate.

(C) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (I) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the Consolidated Firearms

Information System via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to the Consolidated Firearms Information System shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(D) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (J) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the Consolidated Firearms Information System via the CLETS by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to the Consolidated Firearms Information System shall arrange with the sheriff of the county in which the agency is located to input this information via this system. In addition, that law enforcement agency shall not deliver that pistol, revolver, or other firearm capable of being concealed upon the person to the person referred to in this subparagraph if delivery takes place prior to January 1, 2003, unless, prior to the delivery of the same, the person presents proof to the agency that he or she is the holder of a basic firearms safety certificate or is exempt from obtaining a basic firearms safety certificate pursuant to Section 12081, or, commencing January 1, 2003, is the holder of a handgun safety certificate.

(3) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who subsequently transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, and until January 1, 2003, that individual shall have a basic firearms safety certificate in order for the exemption set forth in this paragraph to apply. Commencing January 1, 2003, the exemption shall not apply, and the individual shall obtain a handgun safety certificate

1 prior to transferring ownership to himself or herself, or taking
2 possession of a handgun in an individual capacity.

3 (j) Subdivision (d) of Section 12072 and subdivision (b) of
4 Section 12801 shall not apply to deliveries, transfers, or returns of
5 firearms made pursuant to Section 12028, 12028.5, or 12030.

6 (k) Section 12071, subdivision (c) of Section 12072, and
7 subdivision (b) of Section 12801 shall not apply to any of the
8 following:

9 (1) The delivery, sale, or transfer of unloaded firearms that are
10 not pistols, revolvers, or other firearms capable of being concealed
11 upon the person by a dealer to another dealer upon proof of
12 compliance with the requirements of paragraph (1) of subdivision
13 (f) of Section 12072.

14 (2) The delivery, sale, or transfer of unloaded firearms by
15 dealers to persons who reside outside this state who are licensed
16 pursuant to Chapter 44 (commencing with Section 921) of Title 18
17 of the United States Code and the regulations issued pursuant
18 thereto.

19 (3) The delivery, sale, or transfer of unloaded firearms to a
20 wholesaler if the firearms are being returned to the wholesaler and
21 are intended as merchandise in the wholesaler's business.

22 (4) The delivery, sale, or transfer of unloaded firearms by one
23 dealer to another dealer if the firearms are intended as merchandise
24 in the receiving dealer's business upon proof of compliance with
25 the requirements of paragraph (1) of subdivision (f) of Section
26 12072.

27 (5) The delivery, sale, or transfer of an unloaded firearm that
28 is not a pistol, revolver, or other firearm capable of being
29 concealed upon the person by a dealer to himself or herself.

30 (6) The loan of an unloaded firearm by a dealer who also
31 operates a target facility that holds a business or regulatory license
32 on the premises of the building designated in the license or whose
33 building designated in the license is on the premises of any club or
34 organization organized for the purposes of practicing shooting at
35 targets upon established ranges, whether public or private, to a
36 person at that target facility or that club or organization, if the
37 firearm is at all times kept within the premises of the target range
38 or on the premises of the club or organization.

39 (l) A person who is exempt from subdivision (d) of Section
40 12072 or is otherwise not required by law to report his or her

1 acquisition, ownership, or disposal of a pistol, revolver, or other
2 firearm capable of being concealed upon the person or who moves
3 out of this state with his or her pistol, revolver, or other firearm
4 capable of being concealed upon the person may submit a report
5 of the same to the Department of Justice in a format prescribed by
6 the department.

7 (m) Subdivision (d) of Section 12072 and subdivision (b) of
8 Section 12801 shall not apply to the delivery, sale, or transfer of
9 unloaded firearms to a wholesaler as merchandise in the
10 wholesaler's business by manufacturers or importers licensed to
11 engage in that business pursuant to Chapter 44 (commencing with
12 Section 921) of Title 18 of the United States Code and the
13 regulations issued pursuant thereto, or by another wholesaler, if
14 the delivery, sale, or transfer is made in accordance with Chapter
15 44 (commencing with Section 921) of Title 18 of the United States
16 Code.

17 (n) (1) The waiting period described in Section 12071 or
18 12072 shall not apply to the delivery, sale, or transfer of a pistol,
19 revolver, or other firearm capable of being concealed upon the
20 person by a dealer in either of the following situations:

21 (A) The dealer is delivering the firearm to another dealer and
22 it is not intended as merchandise in the receiving dealer's business.

23 (B) The dealer is delivering the firearm to himself or herself
24 and it is not intended as merchandise in his or her business.

25 (2) In order for this subdivision to apply, both of the following
26 shall occur:

27 (A) If the dealer is receiving the firearm from another dealer,
28 the dealer receiving the firearm shall present proof to the dealer
29 delivering the firearm that he or she is licensed pursuant to Section
30 12071 by complying with paragraph (1) of subdivision (f) of
31 Section 12072.

32 (B) Whether the dealer is delivering, selling, or transferring the
33 firearm to himself or herself or to another dealer, on the date that
34 the application to purchase is completed, the dealer delivering the
35 firearm shall forward by prepaid mail to the Department of Justice
36 a report of the same and the type of information concerning the
37 purchaser or transferee as is indicated in subdivision (b) of Section
38 12077. Where the electronic or telephonic transfer of applicant
39 information is used, on the date that the application to purchase is
40 completed, the dealer delivering the firearm shall transmit an

1 electronic or telephonic report of the same and the type of
2 information concerning the purchaser or transferee as is indicated
3 in subdivision (b) of Section 12077.

4 (o) Section 12071 and subdivisions (c) and (d) of Section
5 12072 shall not apply to the delivery, sale, or transfer of firearms
6 regulated pursuant to Section 12020, Chapter 2 (commencing with
7 Section 12200), or Chapter 2.3 (commencing with Section
8 12275), if the delivery, sale, or transfer is conducted in accordance
9 with the applicable provisions of Section 12020, Chapter 2
10 (commencing with Section 12200), or Chapter 2.3 (commencing
11 with Section 12275).

12 (p) (1) Paragraph (3) of subdivision (a) and subdivision (d) of
13 Section 12072 shall not apply to the loan of a firearm that is not
14 a pistol, revolver, or other firearm capable of being concealed upon
15 the person to a minor, with the express permission of the parent or
16 legal guardian of the minor, if the loan does not exceed 30 days in
17 duration and is for a lawful purpose.

18 (2) Paragraph (3) of subdivision (a) of Section 12072,
19 subdivision (d) of Section 12072, and subdivision (b) of Section
20 12801 shall not apply to the loan of a pistol, revolver, or other
21 firearm capable of being concealed upon the person to a minor by
22 a person who is not the parent or legal guardian of the minor if all
23 of the following circumstances exist:

24 (A) The minor has the written consent of his or her parent or
25 legal guardian that is presented at the time of, or prior to the time
26 of, the loan, or is accompanied by his or her parent or legal
27 guardian at the time the loan is made.

28 (B) The minor is being loaned the firearm for the purpose of
29 engaging in a lawful, recreational sport, including, but not limited
30 to, competitive shooting, or agricultural, ranching, or hunting
31 activity, or a motion picture, television, or video production, or
32 entertainment or theatrical event, the nature of which involves the
33 use of a firearm.

34 (C) The duration of the loan does not exceed the amount of time
35 that is reasonably necessary to engage in the lawful, recreational
36 sport, including, but not limited to, competitive shooting, or
37 agricultural, ranching, or hunting activity, or a motion picture,
38 television, or video production, or entertainment or theatrical
39 event, the nature of which involves the use of a firearm.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Paragraph (3) of subdivision (a), subdivision (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(4) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her grandparent who is not the legal guardian of the minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(6) Subparagraph (A) of paragraph (3) of subdivision (a) of Section 12072 shall not apply to the sale of a handgun if both of the following requirements are satisfied:

(A) The sale is to a person who is at least 18 years of age.

(B) The firearm is an antique firearm as defined in paragraph (16) of subsection (a) of Section 921 of Title 18 of the United States Code.

(q) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by

1 that licensed hunter for a period of time not to exceed the duration
2 of the hunting season for which that firearm is to be used.

3 (r) The waiting period described in Section 12071, 12072, or
4 12084 shall not apply to the delivery, sale, or transfer of a firearm
5 to the holder of a special weapons permit issued by the Department
6 of Justice issued pursuant to Section 12095, 12230, 12250, or
7 12305. On the date that the application to purchase is completed,
8 the dealer delivering the firearm or the law enforcement agency
9 processing the transaction pursuant to Section 12084, shall
10 forward by prepaid mail to the Department of Justice a report of
11 the same as described in subdivision (b) or (c) of Section 12077 or
12 Section 12084. If the electronic or telephonic transfer of applicant
13 information is used, on the date that the application to purchase is
14 completed, the dealer delivering the firearm shall transmit to the
15 Department of Justice an electronic or telephonic report of the
16 same as is indicated in subdivision (b) or (c) of Section 12077.

17 (s) Subdivision (d) of Section 12072 and subdivision (b) of
18 Section 12801 shall not apply to the loan of an unloaded firearm
19 or the loan of a firearm loaded with blank cartridges, to a person
20 18 years of age or older, for use solely as a prop for a motion
21 picture, television, or video production or an entertainment or
22 theatrical event.

23 (t) (1) The waiting period described in Sections 12071, 12072,
24 and 12084 shall not apply to the sale, delivery, loan, or transfer of
25 a firearm that is a curio or relic, as defined in Section 178.11 of
26 Title 27 of the Code of Federal Regulations, by a dealer or through
27 a law enforcement agency to a person who is licensed as a collector
28 pursuant to Chapter 44 (commencing with Section 921) of Title 18
29 of the United States Code and the regulations issued pursuant
30 thereto who has a current certificate of eligibility issued to him or
31 her by the Department of Justice pursuant to Section 12071. On the
32 date that the delivery, sale, or transfer is made, the dealer
33 delivering the firearm or the law enforcement agency processing
34 the transaction pursuant to Section 12084, shall forward by
35 prepaid mail to the Department of Justice a report of the
36 transaction pursuant to subdivision (b) of Section 12077 or Section
37 12084. If the electronic or telephonic transfer of applicant
38 information is used, on the date that the application to purchase is
39 completed, the dealer delivering the firearm shall transmit to the
40 Department of Justice an electronic or telephonic report of the

1 transaction as is indicated in subdivision (b) or (c) of Section
2 12077.

3 (2) Subdivision (d) of Section 12072 shall not apply to the
4 infrequent sale, loan, or transfer of a firearm that is not a pistol,
5 revolver, or other firearm capable of being concealed upon the
6 person, which is a curio or relic manufactured at least 50 years
7 prior to the current date, but not including replicas thereof, as
8 defined in Section 178.11 of Title 27 of the Code of Federal
9 Regulations.

10 (u) As used in this section:

11 (1) “Infrequent” has the same meaning as in paragraph (1) of
12 subdivision (c) of Section 12070.

13 (2) “A person taking title or possession of firearms by
14 operation of law” includes, but is not limited to, any of the
15 following instances wherein an individual receives title to, or
16 possession of, firearms:

17 (A) The executor or administrator of an estate if the estate
18 includes firearms.

19 (B) A secured creditor or an agent or employee thereof when
20 the firearms are possessed as collateral for, or as a result of, a
21 default under a security agreement under the Commercial Code.

22 (C) A levying officer, as defined in Section 481.140, 511.060,
23 or 680.260 of the Code of Civil Procedure.

24 (D) A receiver performing his or her functions as a receiver if
25 the receivership estate includes firearms.

26 (E) A trustee in bankruptcy performing his or her duties if the
27 bankruptcy estate includes firearms.

28 (F) An assignee for the benefit of creditors performing his or
29 her functions as an assignee, if the assignment includes firearms.

30 (G) A transmutation of property consisting of firearms
31 pursuant to Section 850 of the Family Code.

32 (H) Firearms passing to a surviving spouse pursuant to Chapter
33 1 (commencing with Section 13500) of Part 2 of Division 8 of the
34 Probate Code.

35 (I) Firearms received by the family of a police officer or deputy
36 sheriff from a local agency pursuant to Section 50081 of the
37 Government Code.

38 (J) The transfer of a firearm by a law enforcement agency to the
39 person who found the firearm where the delivery is to the person

1 as the finder of the firearm pursuant to Article 1 (commencing with
2 Section 2080) of Chapter 4 of Division 3 of the Civil Code.

3 SEC. 10. Section 12082 of the Penal Code is amended to read:

4 12082. (a) A person shall complete any sale, loan, or transfer
5 of a firearm through a person licensed pursuant to Section 12071
6 in accordance with this section in order to comply with subdivision
7 (d) of Section 12072. The seller or transferor or the person loaning
8 the firearm shall deliver the firearm to the dealer who shall retain
9 possession of that firearm. The dealer shall then deliver the firearm
10 to the purchaser or transferee or the person being loaned the
11 firearm, if it is not prohibited, in accordance with subdivision (c)
12 of Section 12072. If the dealer cannot legally deliver the firearm
13 to the purchaser or transferee or the person being loaned the
14 firearm, the dealer shall forthwith, without waiting for the
15 conclusion of the waiting period described in Sections 12071 and
16 12072, return the firearm to the transferor or seller or the person
17 loaning the firearm. The dealer shall not return the firearm to the
18 seller or transferor or the person loaning the firearm when to do so
19 would constitute a violation of subdivision (a) of Section 12072.
20 If the dealer cannot legally return the firearm to the transferor or
21 seller or the person loaning the firearm, then the dealer shall
22 forthwith deliver the firearm to the sheriff of the county or the chief
23 of police or other head of a municipal police department of any city
24 or city and county who shall then dispose of the firearm in the
25 manner provided by Sections 12028 and 12032. The purchaser or
26 transferee or person being loaned the firearm may be required by
27 the dealer to pay a fee not to exceed ten dollars (\$10) per firearm,
28 and no other fee may be charged by the dealer for a sale, loan, or
29 transfer of a firearm conducted pursuant to this section, except for
30 the applicable fees that may be charged pursuant to Sections
31 12076, 12076.5, and 12088.9 and forwarded to the Department of
32 Justice, and the fees set forth in Section 12805. Nothing in these
33 provisions shall prevent a dealer from charging a smaller fee. The
34 dealer may not charge any additional fees.

35 (b) The Attorney General shall adopt regulations under this
36 section to do all of the following:

37 (1) Allow the seller or transferor of the person loaning the
38 firearm, and the purchaser or transferee or the person being loaned
39 the firearm, to complete a sale, loan, or transfer through a dealer,
40 and to allow those persons and the dealer to comply with the

requirements of this section and Sections 12071, 12072, 12076, and 12077 and to preserve the confidentiality of those records.

(2) Where a personal handgun importer is selling or transferring a pistol, revolver, or other firearm capable of being concealed upon the person to comply with clause (ii) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, to allow a personal handgun importer's ownership of the pistol, revolver, or other firearm capable of being concealed upon the person being sold or transferred to be recorded in a manner that if the firearm is returned to that personal handgun importer because the sale or transfer cannot be completed, the Department of Justice will have sufficient information about that personal handgun importer so that a record of his or her ownership can be maintained in the registry provided by subdivision (c) of Section 11106.

(3) Ensure that the register or record of electronic transfer shall state the name and address of the seller or transferor of the firearm or the person loaning the firearm and whether or not the person is a personal handgun importer in addition to any other information required by Section 12077.

(c) Notwithstanding any other provision of law, a dealer who does not sell, transfer, or keep an inventory of handguns is not required to process private party transfers of handguns.

(d) A violation of this section by a dealer is a misdemeanor.

SEC. 11. Any section of any act enacted by the Legislature during the 2004 calendar year that takes effect on or before January 1, 2005, and that amends, amends and renumbers, adds, repeals and adds, or repeals any one or more of the sections affected by this act, with the exception of Senate Bill 600, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, title, part, or division of any code by this act shall not become operative if any section of any other act is enacted by the Legislature during the 2004 calendar year and takes effect on or before January 1, 2005, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, title, part, or division.

~~SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school~~

1 ~~district because in that regard this act creates a new crime or~~
2 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
3 ~~for a crime or infraction, within the meaning of Section 17556 of~~
4 ~~the Government Code, or changes the definition of a crime within~~
5 ~~the meaning of Section 6 of Article XIII B of the California~~
6 ~~Constitution.~~

7 ~~However, notwithstanding Section 17610 of the Government~~
8 ~~Code, if the Commission on State Mandates determines that this~~
9 ~~act contains other costs mandated by the state, reimbursement to~~
10 ~~local agencies and school districts for those costs shall be made~~
11 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
12 ~~4 of Title 2 of the Government Code. If the statewide cost of the~~
13 ~~claim for reimbursement does not exceed one million dollars~~
14 ~~(\$1,000,000), reimbursement shall be made from the State~~
15 ~~Mandates Claims Fund.~~

16 *SEC. 12. No reimbursement is required by this act pursuant*
17 *to Section 6 of Article XIII B of the California Constitution*
18 *because the only costs that may be incurred by a local agency or*
19 *school district will be incurred because this act creates a new crime*
20 *or infraction, eliminates a crime or infraction, or changes the*
21 *penalty for a crime or infraction, within the meaning of Section*
22 *17556 of the Government Code, or changes the definition of a*
23 *crime within the meaning of Section 6 of Article XIII B of the*
24 *California Constitution.*

